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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Note by the Secretariat

Addendum

1. By 15 February 1999, comments had been received from the following States parties to the International Covenant on Economic, Social and Cultural Rights: Cyprus, Mexico and Sweden.

2. The present document contains a summary of the substantive replies received.

COMMENTS RECEIVED FROM STATES PARTIES TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Cyprus

[Original: English]
[9 November 1998]

The competent authorities of the Republic of Cyprus consider that the adoption of the Optional Protocol would provide a mechanism for ensuring the implementation and respect of all the rights safeguarded by the Covenant. They are, however, of the opinion that more States would ratify the Optional Protocol if they could opt out of certain articles provided that the articles each State could exclude would not exceed a specific number and this with a view to safeguarding the comprehensiveness of the Optional Protocol.

Mexico

[Original: Spanish]
[12 January 1999]

1. The Government of Mexico attaches particular importance to the principles of the interdependence and indivisibility of all human rights. For that reason, it is of the view that a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights should be drawn up.

2. Subject to any more specific suggestions that may be presented during the negotiation of this draft by the delegation of Mexico in connection with the proposal submitted by the Committee on Economic, Social and Cultural Rights, the Mexican Government considers that in principle and as indicated by the Committee, the Optional Protocol in question should as far as possible resemble the first Optional Protocol to the International Covenant on Civil and Political Rights and incorporate the observations and constructive suggestions made during the elaboration of similar instruments.

3. The Government of Mexico is of the view that the main purpose of the Optional Protocol should be to authorize the Committee on Economic, Social and Cultural Rights to examine communications in the same way as is done by the Human Rights Committee under the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights.

Sweden

[Original: English]
[21 December 1998]

1. Sweden is since 1976 a State party to the International Covenant on Economic, Social and Cultural Rights and has submitted periodic reports in accordance with article 16 of the Covenant. Sweden is also a State party to the European Social Charter and has recently ratified both the Revised European Social Charter and the Additional Protocol to the European Social Charter providing for a system of collective complaints.

2. In its policy on human rights, Sweden attaches very high priority to the realization of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights and places great importance on the role of the Committee concerning the follow-up of the implementation of the Covenant. Sweden lends its support to efforts aimed at improving the effectiveness and relevance of the Committee's work.

3. Sweden believes that the Committee should not only seek new and appropriate ways to measure States parties' compliance with their obligations but it should also actively encourage dialogue with the State party concerned as well as between States parties on the steps to be taken to achieve the full realization of the rights recognized in the Covenant.

4. In addressing the question of implementation the Covenant has not only established obligations for each State party but also envisaged the active involvement of the international community in achieving progressively the full realization of the rights enshrined therein. The reference in article 2 to international cooperation as well as the provisions in articles 16-23 for various United Nations agencies to play an active role, call for a cooperative approach in finding new ways towards the implementation of the Covenant. In this context, Sweden welcomes the decision by the Commission on Human Rights to appoint a Special Rapporteur with a mandate to focus on the right to education.

5. As to the draft optional protocol for the consideration of communications in relation to the Covenant, the Government of Sweden has carefully studied the arguments advanced in favour of drafting such an instrument. While it is perfectly clear that economic, social and cultural rights are individual rights, it does not necessarily follow that international mechanisms entrusted to monitor the compliance of States with these rights should involve individual complaint procedures.

6. In order for an individual complaint procedure to function in a credible and efficient way, the State obligations to which such a procedure would refer would have to be precise. This is, for instance, the case with the rights

laid down in the International Covenant on Civil and Political Rights, in relation to which a complaint procedure was instituted from the outset. As regards the International Covenant on Economic, Social and Cultural Rights, the authors at the time did not envisage such a procedure.

7. Although the differences between the nature of the obligations laid down in the two Covenants should not be exaggerated, it has to be recognized that differences do exist. In the International Covenant on Civil and Political Rights, States are obliged to respect and ensure the rights recognized therein. In article 2.1 of the International Covenant on Economic, Social and Cultural Rights it is stipulated that States are obliged to take steps with a view to achieving progressively the full implementation of the rights. Hence, the obligation to progressively fulfil is emphasized rather than obligations to respect and protect the rights.

8. It should be noted in this context that while article 2.2 stipulates that States are to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind, the subsequent article 2.3 allows developing countries, with due regard for human rights and their national economy, to determine to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals. There is no corresponding provision in the International Covenant on Civil and Political Rights, which is applicable to all States without distinction as to their economic resources.

9. The Government of Sweden is not convinced that an individual complaint procedure under the International Covenant on Economic, Social and Cultural Rights would serve the purpose of illuminating problems or deficiencies when it comes to the steps to be taken by a State to realize a particular right.

10. It has to be borne in mind that there is a certain overlapping between the rights laid down in the International Covenant on Civil and Political Rights and those of the International Covenant on Economic, Social and Cultural Rights. One example is article 22 (freedom of association) in the International Covenant on Civil and Political Rights and article 8 (the right to form a trade union) in the International Covenant on Economic, Social and Cultural Rights. The existence of two different supervisory mechanisms set up under two different human rights standards protecting essentially the same right entails a risk that divergent standards would be developed when handling an individual complaint. Such divergences could create serious problems for States which have declared themselves bound by both instruments, and which would face a situation of having to adapt themselves to international case-law which is not consistent.

11. Sweden believes that another important consideration is how the Committee's available capacity could best be used to ensure a comprehensive approach in assisting State parties in complying with their obligations under the Covenant. At present the Committee meets only once a year. It cannot be

excluded that the envisaged complaint procedure would general a vast number of individual complaints. The processing of such complaints would detract from other more urgent tasks of the Committee. Another closely linked question is how scarce servicing capacity can best be used to meet the requirements of the Committee.

12. To sum up, the Government of Sweden remains unconvinced that the suggested draft optional protocol presents an optimal way forward in the strengthening of the international mechanisms needed to contribute to the universal realization of economic, social and cultural rights.